

## TREE ORDINANCE BOARD REPORT

To: Board of Managers

Re: Proposed Resolution of Tree Take Down Appeals, 9 Oxford St.

A request was submitted to the Village Manager last June by James Gibson, who had a contingent purchase contract on the vacant lot at 9 Oxford St., for the Village Arborist to assess the tree population on the property and to advise as to the approvals which he might need in order to clear the property for development. Dr. Feather found that the property contained 21 trees 24" or greater in diameter. He further reported his belief that 17 should qualify for administrative approval but that four were of a size and quality that would require Board approval for take down. Upon receipt of this report, and after further consultation with Dr. Feather, Mr. Gibson determined that he would retain two of these latter trees (a large Silver Maple on the east rear border and Pin Oak on the rear property line) and file an appeal to remove 2 mature maples on the west border in order to permit the property's development with a house, driveway, two car garage and patio. This appeal was referred by Ms. Davis-Cook, Village Manager, to the Tree Ordinance Board (TOB) for its review.

Concurrently with filing this appeal, Mr. Gibson sought administrative approval for removal of an additional 17 trees, 24" and greater in diameter. The Village Manager deferred action on this matter pending the TOB's comments and also those of the County Historic Preservation Commission, whose approval would also be needed for the removal of these trees.

Per its procedures, the TOB notified the immediate neighbors and the Tree Committee of the proposed takedowns. Three of the immediate neighbors of the 9 Oxford St. property submitted objections to the proposed development plan, and in particular to the extent of tree removals, both with the TOB and with the Commission. In an early July hearing on the matter, members of the Commission expressed general support for the plan but also asked Mr. Gibson to make some accommodation to the neighbor objections.

Later in July members of the Village Tree Committee, Village staff, the Village Arborist and members of the TOB conducted site visits and also met with the concerned neighbors and with Mr. Gibson's business partner, architect, and landscape designer. As a result of these meetings the original development plan was modified to:

- Reduce the dwelling's east-west dimension by three (3) feet ;
- Provide a total of five (5) Reforestation Trees that will reach a height of 45' on maturity, including 4 deeply rooting Red Oak and an American Sycamore per the recommendation of Dr. Feather and the TOB;
- Show a screen of fifteen (15) evergreens along the property's west border and approximately sixteen (16) shrubs on the properties' eastern side;
- Show a dual track driveway to respond to TOB concern as to water runoff.

This revised plan was circulated on August 19 to the abutting and fronting neighbors with a request that any comments they might have be reported to the TOB by Aug. 30. No comments have been received.

This revised plan has also served as the basis for a Consent Agreement that has been drafted by the TOB and endorsed by Mr. Gibson. The Consent Agreement includes all of the usual recitals and stipulates that the 19 trees proposed for removal (17 to be approved administratively and the two appeal trees)

may be taken down once Mr. Gibson and/or his assigns satisfies the Village Manager that all applicable building permits have been obtained and a contract for actual construction of the proposed development has been signed, conditioned also on his commitment to reforest and develop the property in a manner consistent with the revised Reforestation Plan dated August 13, 2013 (enclosed) and specifically that he will within six months of completing construction plant and maintain the five (5) specified reforestation trees.

The Consent Agreement has been drafted so as to permit Mr. Gibson upon sale of the 9 Oxford St. property either to retain the obligation to plant and maintain the reforestation trees or to provide in an agreement acceptable to the Village Manager for these obligations to be assumed by the property's purchaser. The Agreement also stipulates agreed damages of \$5000 in the event Mr. Gibson and/or his assignee fail to meet their obligations.

The TOB believes that the proposed Agreement reflects a reasonable resolution of the issues in a manner consistent with Village Board policies and recommends its approval.

Signed: Samuel A. Lawrence, chair, TOB



# REFORESTATION CONSENT AGREEMENT

CHEVY CHASE VILLAGE, hereinafter referred to as the "Village", is a Maryland municipal corporation which is authorized to and does regulate the removal, destruction and impairment of certain trees on private property as set forth in Chapter 17, entitled Urban Forest, of the Chevy Chase Village Code.

James E. Gibson and/or assigned, hereinafter referred to collectively as the "Prospective Owner", has entered into a contract to purchase the property described as Lot 32 and Part of Lot 31, Block 57, in the subdivision known as Section 2, CHEVY CHASE, as per plat thereof recorded in Plat Book 2 at Plat Number 106 among the Land Records of Montgomery County, Maryland, otherwise known as 9 Oxford Street, hereinafter referred to as "the Property".

The Prospective Owner has requested a permit from the Village Manager under Section 17-3 of the Village Code to remove (1) 12" Norway Maple and (1) 16" Sugar Maple, hereinafter referred to as the "Subject Trees", (the trunk of which measures more than 24 inches in circumference at 4-½ feet above ground and therefore requires a permit for removal) located in the rear (west) yard of the Property as indicated on the plan attached hereto as Exhibit A. The Prospective Owner seeks to remove the Subject Trees in order to construct a new house, driveway and detached garage, hereinafter referred to as the "Proposed Work". The Village Manager denied the permit for failure to meet any of the conditions set forth in Section 17-3.

Under Section 17-4 of the Village Code, the Prospective Owner has appealed the denial of the permit.

Under Section 17-5 of the Village Code, the Board of Managers of Chevy Chase Village has delegated the initial administration of appeals under Section 17-4 to the Tree Ordinance Board ("TOB").



The TOB has met with the Prospective Owner and visited the Property. The TOB, after consulting with the Village arborist, unanimously concluded that the Proposed Work was a legitimate reason for removing the Subject Trees, that it was necessary to remove the trees to construct the Proposed Work, and that the trees proposed to be removed were not by reason of age, size or outstanding qualities, including uniqueness, rarity or species specimen, of such nature as to require preservation. The Prospective Owner has agreed that, if allowed to remove the Subject Trees, as well as those identified as appropriate for removal by Dr. Tolbert Feather, Consulting Village Arborist, in a report dated June 26, 2013 and appended hereto as Exhibit A, they will reforest by planting and developing the Property in a manner consistent with the Landscape Plan provided by Mark Voelkel of Rolling Acres Landscape dated August 13, 2013, also appended hereto and specifically that the Prospective Owner will plant at least five (5) trees of at least 2-½ inches in caliper that will grow to forty-five (45) feet or more in height at maturity, hereinafter referred to as the Reforestation Trees, of the species and in the locations indicated on the plan attached hereto as Exhibit B.

In early July 2013, the Chair of the TOB solicited input from the residents of five (5) abutting and confronting properties, three of whom responded. Dr. and Mrs. Michael Summerfield (7 Oxford Street); Ms. Elisabeth Boas and Mr. Arthur Spitzer (11 Oxford Street); and Mr. Porter Wheeler (4 Oxford Street) offered recommendations which the Prospective Owner has sought to address in the above referenced Landscape Plan. This plan was provided on August 19, 2013 to the Owners of the five (5) abutting and confronting properties for their information and further comment.

In early July 2013, the members of the Village Tree Committee were also given email notice of the proposed removal and reforestation and also asked to submit comments or objections.. One member reported concerns, others had no comment or endorsed the proposed removals as necessary to develop the Property.

Based on the foregoing, the TOB recommends that the Prospective Owner's request to remove the Subject Trees be granted conditioned on:

- (1) The Prospective Owner completing their purchase of the Property, and so becoming the "Owner" for the purposes of the remainder of this document;
- (2) The Owner, prior to removal of the Subject Trees, first obtaining a permit from the Village authorizing construction of the Proposed Work and submitting to the Village Manager a construction contract for the same; and
- (3) The Owner agreeing to reforest with the Reforestation and other trees and shrubs in a manner consistent with the above-referenced Rolling Acres Landscape Plan within six (6) months from completion of the approved construction at the Property.

NOW, THEREFORE, in consideration of the mutual undertakings and obligations herein contained, One Dollar (\$1.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Village and the Owner hereby agree and covenant as follows:

1. The Owner, if he has not already done so, will obtain a permit to construct the Proposed Work and submit to the Village Manager a construction contract for the same.
2. The Village, after the issuance of the aforesaid permit and receipt of the aforesaid construction contract for the Proposed Work, will grant a permit to the Owner for the purpose of removing the Subject Trees described above within three (3) months of the effective date of this Agreement (as defined in paragraph 12 below).
3. The Owner agrees to reforest within six (6) months from completion of the approved construction at the Property by planting and developing the Property in a manner consistent with the Landscape Plan provided by Mark Voelkel of Rolling Acres Landscape dated August 13, 2013, also appended hereto and specifically that the Prospective Owner will plant at least five (5) trees of at least 2-½ inches in caliper that will grow to forty-five (45) feet or more in height at maturity, hereinafter referred to as the Reforestation Trees, of the species and in the

locations indicated on the plan attached hereto as Exhibit B. The Owner further agrees to notify the Village Manager when the trees have been planted.

4. The Owner agrees to maintain the Reforestation Trees at the Owner's sole expense and the Owner shall not remove, destroy, or impair the health of the reforestation trees in any way without the express prior written consent of the Village and to replace the five (5) reforestation trees if they should nonetheless become diseased or die within five (5) years of the effective date of this Agreement.

5. Any changes or modifications to the reforestation plan as it pertains to the five (5) Subject Trees, shall require the further written consent of the Village, which may be withheld in the Village's sole discretion.

6. The Owner acknowledges that compliance with this Consent Agreement is necessary for the protection of the public health, safety and welfare of the residents of the Village and acknowledges and agrees, in the event of Owner's breach of this Agreement, that the Village would not have an adequate remedy at law, and the Village shall be entitled to specific performance of the Owner's obligations and to injunctive relief related thereto without posting a bond or proving actual damages, in addition to any other remedies which may be available. The Owner further agrees that the costs incurred by the Village, including legal expenses, shall be charged to the Owner and may be assessed against the Owner's property along with property taxes. The Owner further agrees not to contest any action brought by the Village to obtain specific performance and injunctive relief under this Agreement. The Owner also agrees that, if they fail to complete their reforestation obligations, the Village shall have the right to enter upon the Owner's property as it deems proper to install the reforestation trees.

7. The Owner also acknowledges that the Village and the public residing in the Village would incur substantial damages in the event of Owner's breach of the requirements of this Agreement, including, but not limited to, the costs of staff time, arborist time, and other expenses incurred in enforcing this Agreement and the diminution of the Village's tree canopy. The parties recognize the difficulty in computing actual damages and, accordingly, agree to liquidated damages for the aforesaid costs, delay, and harm to the public. The parties acknowledge that liquidated damages of \$5,000.00 are a reasonable estimate, at the time of the execution of this Agreement, of the damages to the Village and the public that

will likely occur as a result of the Owner's failure to perform his obligations under this Agreement. The Owner acknowledges that the liquidated damages agreed to are not a penalty and that they, along with any costs incurred by the Village, including legal expenses, may be assessed against the Property along with property taxes.

8. The Owner shall be jointly and severally liable for their obligations hereunder and expressly waive any right to a jury trial.

9. By signing this Agreement the undersigned Owner represents to the Village that they have submitted a contract to purchase the property known as 9 Oxford Street, the Subject Property, described above.

10. By signing the Agreement, the Chairman of the TOB or his delegate signifies that the TOB has approved this Consent Agreement and has recommended its adoption by the Village Board of Managers.

11. By signing this Agreement, the Village Manager signifies that the Village Board of Managers has approved this Consent Agreement.

12. The effective date of this Consent Agreement is the date the Village Manager signs the Agreement signifying that she has been informed by the Village Board of Managers that the Consent Agreement has been approved.

OWNER:

\_\_\_\_\_  
James E. Gibson and/or assigned

CHEVY CHASE VILLAGE

By: \_\_\_\_\_  
Samuel Lawrence, Chairman, Tree Ordinance Board

By: \_\_\_\_\_  
Shana R. Davis-Cook, Village Manager

Date: \_\_\_\_\_



# Chevy Chase Village Tree Removal Permit Application

Permit No. \_\_\_\_\_

All trees on private property with trunks that measure at least twenty-four (24) inches in circumference (or 7.7 inches in diameter) at four and one-half (4½) feet above ground level require a Village permit to be removed.

Property Address: <u>9 Oxford Street</u>	
Resident: <u>Jim Gibson</u>	
Telephone: <u>202-364-1555</u>	
E-mail: <u>jim@gibsonbuilders.com</u>	
Tree Removal Contractor (required):	
Business Name: <u>LEE'S TREE SERVICE, INC.</u>	
Owner: <u>MARK LEE PEYTON JR.</u>	
Address: <u>16105 MORROW RD</u> <u>POOLESVILLE, MD 20837</u>	
Telephone: <u>301-208-8235</u>	Fax: <u>301-990-7217</u>
E-mail: <u>LEESTREESERVICE@YAHOO.COM</u>	
MD Dept. of Natural Resources (DNR) License No. (required): <u>#118</u>	
For Village office staff use:	
Is this property located within the historic district? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Staff initials <u>ES</u>	
Date application submitted to Village Office: <u>6/25/13</u> Date approved or denied: _____	

## Village Code Chapter 17. Urban Forest §17-1 and 17-2. Permit Required.

"No person shall remove or destroy, or cause the removal or destruction, of a tree or undertake any action that will substantially impair the health or growth of a tree without first obtaining a permit from the Village Manager. No permit shall be required for normal and reasonable trimming or other tree care designed to maintain the health, shape, or balance of a tree."

## Village Code §17-3. Permit Standards.

The Village Manager may issue a permit *only* if at least one (1) of the following conditions applies:

- The tree is diseased beyond restoration, insect infected beyond restoration, or injured beyond restoration;
- The tree is dead or dying, or is in danger of falling;
- The tree constitutes a hazard to the safety of persons;
- The tree constitutes a hazard and threatens injury to property;
- The tree constitutes a hazard and threatens injury to, or would have a negative effect on the health of other trees;
- The tree is injurious to or creates a condition injurious to the health of a person, certified to by a qualified medical practitioner.

An applicant who is denied a tree removal permit by the Village Manager may appeal that decision to the Board of Managers. Any appeal must be in writing and made within ten (10) days of the permit denial.



### Filing Requirements

- Copy of the findings and recommendations report from the Village Arborist.
- This completed application, including the tree contractor's name, phone number and MD-DNR License No.
- Payment of \$50.00 per tree filing fee for a Village Tree Removal Permit application, up to a max. of \$350.

**By signing below, I understand that no work may be performed until the Village permit is issued and posted to be visible from the street.**

Applicant's Signature: James E Gibson Date: 6/25/13

Tree Removal Plans (including reforestation plan, if any)	
For Use By Village Manager	Approved with the following conditions:
For Use By Village Manager	Denied for the following reasons:

<b>Filing Fee:</b> $\$50.00/\text{tree} \times \underline{21} \text{ trees} =$ $\underline{\$350.00}$ (up to \$350 max. per application)	<b>Checks Payable to:</b> <div style="text-align: right;"> <b>Chevy Chase Village</b>  <b>5906 Connecticut Avenue</b>  <b>Chevy Chase, MD 20815</b> </div>
<b>Damage Deposit</b> <input type="checkbox"/> \$ _____ <input type="checkbox"/> Waived by Village Manager.	<b>Village Manager Signature:</b> Date: _____
<b>Total Fees + Deposit:</b>	<b>Staff Signature:</b> Date: _____

**Chevy Chase Village**

**Statement of Appeal for Tree Removal Permit**

<b>Subject Property:</b> <b>9 OXFORD STREET. CHEVY CHASE, MD 20815</b>	
<b>Briefly Describe the Proposed Tree Removal</b> (provide additional detail on following pages): <b>REMOVAL OF 12" NORWAY MAPLE, 16" SUGAR MAPLE AND 21" SILVER MAPLE.</b>	
<b>Applicant Name(s) ( List all property owners):</b> <b>Jim Gibson, Bob Holman</b>	
Daytime telephone: <b>(202) 364-1555</b>	Cell:
E-mail: <b>jim@gibsonbuilders.com</b>	<b>chdes8218@gmail.com</b>
Address (if different from property address): <b>5185 McArthur Blvd NW Suite 210 Washington DC 20016</b>	
For Village staff use: Date this form received: <b>6/25/13</b> Tree Removal Permit Appeal No: _____	

**Filing Requirements:**

(Application will not be accepted or reviewed until the application is complete.)

- ☒ Completed *Chevy Chase Village Statement of Appeal for Tree Removal Permit* (this form)
- ☒ Denied *Chevy Chase Village Tree Removal Permit Application*
- ☐ *Chevy Chase Village Tree Inspection Report* from Village Arborist
- ☒ Surveys, plats, landscaping plans/specifications, or other accurate drawings showing boundaries, dimensions, and area of the property, as well as the location and dimensions of all structures/fences/walls/etc. and the tree(s) sought to be removed.
- ☐ Appeal fee (See fee schedule in Chapter 6 of the Village Code).

**Affidavit**

I hereby certify that I have the authority to submit the foregoing appeal, that all owners of the property have signed below, that I have read and understand all requirements and that I or an authorized representative will appear at the scheduled public hearing in this matter. I hereby authorize the Village Manager, or the Manager's designee, the Board of Managers, and members of the Village Tree Committee, to enter onto the subject property for the purposes of assessing the site in relation to this appeal. I hereby declare and affirm, under penalty of perjury, that all matters and facts set forth in the foregoing statement are true and correct to the best of my knowledge, information and belief.

Applicant's Signature: *James E. Gibson*

Date: *6/25/13*

Applicant's Signature: *Bob Holman*

Date: *6/25/13*

**Describe the basis for the appeal (attach additional pages as needed)**

Describe the reasons why the tree removal would not adversely affect the public health, safety or welfare nor the reasonable use of adjoining properties:

The trees we are proposing to remove are located entirely on the property owner's lot.

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Describe the reasons why the tree removal would not substantially impair the intent and purpose of Chapter 17 of the Chevy Chase Village Code, entitled *Urban Forest*:

Removal is necessary to achieve the proposed development, with no reasonable alternative. The trees in question are not of outstanding age, size, quality, rarity or uniqueness. Reforestation is proposed.

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Describe whether the tree exhibits any of the following criteria: (i) is diseased beyond restoration, insect infested beyond restoration, or injured beyond restoration; (ii) is dead or dying, or in danger of falling; (iii) constitutes a hazard to the safety of persons; (iv) constitutes a hazard to the safety of property; (v) constitutes a hazard and threatens injury to, or would have a negative effect on the health of other trees; (vi) is injurious to or creates a condition injurious to the health of a person, certified to by a qualified medical practitioner:

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Describe the reasons for wanting to remove or destroy the tree(s):

The trees obstruct the proposed location of the driveway and garage.

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Describe the reasons, if any, cited by residents who are either in favor of or in opposition to the issuance of the requested tree removal permit:

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If the desired tree clearing is necessary to achieve proposed development, construction or land use otherwise permitted under the Village Code, describe the proposed project and/or land use and any reason(s) why there is no reasonable alternative to the tree removal:

New 2-1/2 story home with a driveway leading to a detached garage in the rear yard. The existing lot is atypically narrow, and the house has been sited to save the more unique elm in the rear yard.

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Describe any proposed reforestation and whether the proposed reforestation includes any trees that meet the Village standards for reforestation (i.e., deciduous hardwood trees that are least 2 ½ inches in caliper at the time of installation and of a species that achieves a mature height of at least 45 feet):

Describe any hardship that would result if the requested tree removal is denied:

Decreased property value.

Describe the reasons why preserving the tree(s) is not desirable because of the age, size or outstanding qualities, including uniqueness, rarity or species specimen, of the tree(s):

The silver and norway maples are not of outstanding age, size uniqueness, or rarity. The norway maple is considered an invasive species.

Describe any other relevant matters that you believe would promote fairness and justice in deciding this appeal:

We would like to work with the Village Tree Board to develop a reforestation plan.

*In authorizing a Tree Removal Permit as a result of this appeal, the Chevy Chase Village Board of Managers may require such conditions, terms or restrictions as it deems necessary in order to protect the public, health, safety or welfare, the reasonable use of adjoining properties and that will substantially effectuate the purpose and intent of Chapter 17 of the Chevy Chase Village Code.*

<b>Appeal Fee: \$250.00</b>	<b>Checks Payable To:</b> <b>Chevy Chase Village</b> <b>5906 Connecticut Ave.</b> <b>Chevy Chase, MD 20815</b>
<b>Fee Paid:</b> <b>Date Paid:</b>	<b>Staff Signature:</b> <b>Date:</b>

# Feather & Assoc.

Tolbert V. Feather, Ph.D.

*Advisors for: Landscape Development  
Landscape Management, Plant Pest Management*

Chevy Chase Village  
5906 Connecticut Avenue  
Chevy Chase, MD 20815

June 26, 2013  
revised 7-8-13

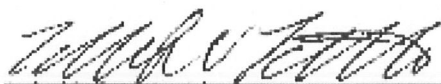
## **RE: Tree Removal Request 9 Oxford St.**

I inspected the site on June 26 and attached is a map that indicates the trees in the following categories. Photos are also attached

1. Trees to be saved – 4 trees A to D on map. All healthy not hazardous.
2. There are 5 trees mapped that look marginally regulated but are under 24" circumference that may be removed without a permit.
3. Trees over 24" circumference that will be approve for removal with a permit (17 Trees).

- 1 – Norway Maple 8" growing on the wall hazard of blowing over
- 2 – Silver Maple 48" Declining and decay in the main trunk, hazardous
- 3, 4, 5 & 6 – 4 Leyland Cypress – Very large and a hazard in wind and ice storms.
- 7 – Elm 18" – Poor form, prone to breakage, hazardous
- 8 – Silver Maple 18' – Top dead, declining, hazardous
- 9 – Mulberry 9" – Poor form, prone to breakage, hazardous
- 10 – Swamp White Oak 8" – Split trunk with adjacent Elm tree, hazardous
- 11 – Elm 14" - Poor form leaning toward 11 Oxford, hazardous
- 12 – Elm 10" - Poor form leaning toward 11 Oxford, hazardous
- 13 – Elm 8" - Poor form leaning toward 11 Oxford, hazardous
- 14 – Elm 10" - Poor form leaning toward 11 Oxford, hazardous
- 15 – Red Maple multi-trunk 30" – poor form prone to splitting at base, hazardous.
- 16 – Pin Oak 10" – up against electric pole, poor structure, hazardous.
- 17 – Blue Spruce – poor structure, heavily shaded.

Note the Owner has indicated that they will appeal the denial of trees # 1 a Norway Maple and 2 a Sugar Maple. I have examined tree # 3, a red Maple, more closely and I think it may be removed as a hazardous tree. After the site inspection I have added Tree B a Pin Oak to be saved and Tree# 10 and 13 for removal.



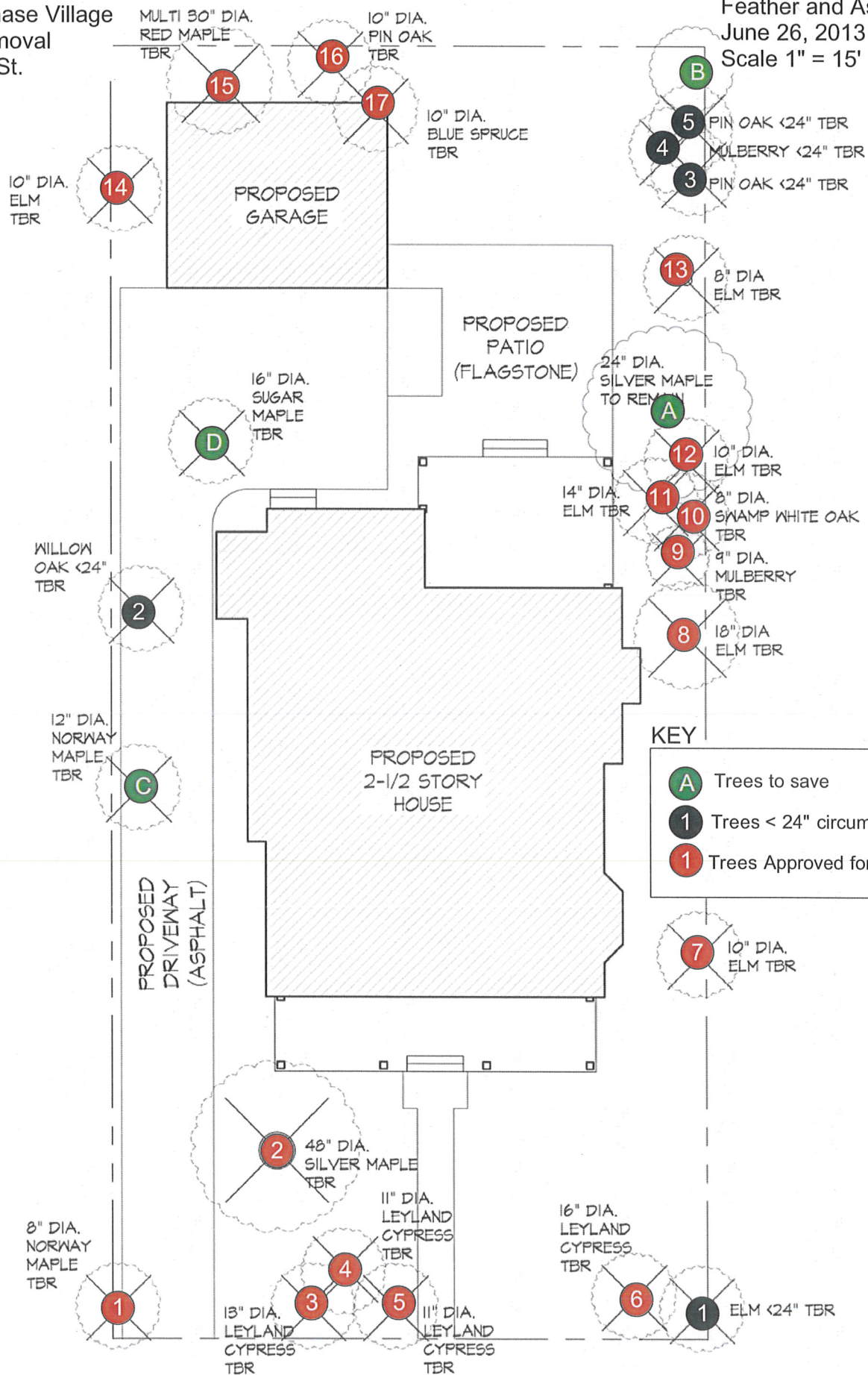
Tolbert V. Feather, Ph.D

7826 Spout Spring Rd., Frederick, MD 21702, [tfeather@xecu.net](mailto:tfeather@xecu.net), 240 271 6749, Fax (301) 662-9315  
MD Tree Expert License#880, ISA Certification #PD-0715, MD Pesticide Applicator#2070-5937



Chevy Chase Village  
Tree Removal  
9 Oxford St.

Feather and Associates  
June 26, 2013 rev 7-8-13  
Scale 1" = 15'



# **KEY**

## **A** Trees to be saved

Item	Tree	Size Inches dbh
A	Silver Maple	24
B	Pin Oak	13
C	Norway Maple	14
D	Sugar Maple	16

## **1** Trees under 24" cricumference that may be removed without permit

Item	Tree	Size inches circumference
1	Elm	< 24
2	Willow Oak	< 24
3	Pin Oak	< 24
4	Mulberry	< 24
5	Pin Oak	< 24

## **1** Trees over 24" circumference that will be approved for removal with a permit

Item	Tree	Size Inches dbh	Comments
1	Norway Maple	8	On Wall Leaning
2	Silver Maple	48	Declining Decay Main Trunk
3	Leyland Cypress	13	Very Large wind/ice hazard
4	Leyland Cypress	11	Very Large wind/ice hazard
5	Leyland Cypress	11	Very Large wind/ice hazard
6	Leyland Cypress	16	Very Large wind/ice hazard
7	Elm	10	Poor form prone to breakage
8	Silver Maple	18	Declining
9	Mulberry	9	Poor form prone to breakage
10	Swamp White Oak	8	Split trunk with adjacent tree
11	Elm	14	Poor form prone to breakage
12	Elm	10	Poor from prone to breakage
13	Elm	8	Poor form prone to breakage
14	Elm	10	On Wall Leaning
15	Red Maple	multi 30	Poor base structure
16	Pin Oak	10	Next to elec pole poor structure
17	Blue Spruce	10	Poor structure

dbh - diameter at 4.5' above ground level